stituted in order to protect someone else. Since all the parties are before the court in bankruptcy proceedings, all the equities of the various claimants can be very easily adjusted. However, no court has gone the length suggested, and it is believed, as indicated above, that the United States Supreme Court would consider the pledge in the instant case wrongful, and allow the petitioner to reclaim since he has identified.

WHEN IS A NEGOTIABLE INSTRUMENT COMPLETE AND REGULAR UPON ITS FACE?—In order to be a holder in due course under the Negotiable Instruments Law, a party must have taken an instrument which is "complete and regular upon its face."[1] In the recent case of *United Ry. and Logging Supply Co.* v. *Siberian Commercial Co.* (Wash. 1921) 201 Pac. 21, a transferee sued as a holder in due course on two trade acceptances payable on November 1, and December 1, respectively, the year remaining unspecified, and the defense interposed was one not available against a holder in due course. *Held,* each instrument was not complete and regular on its face, and the plaintiff could not recover. This represents only one of the various types of cases to which the words "complete and regular" have been applied, but the courts have by no means definitely ascertained precisely which cases are within the scope of these words and which remain beyond the pale.

As regards incompleteness, there is the class of cases, like the instant case, where there has been some omission in connection with the date of payment, *e. g.,* where the note read "on or before four . . . after date."[2] It is true that something has obviously been left out in an attempted specification of the time of payment, and the courts seem correct in holding that such an instrument is not payable on demand, as one in which no time for payment is expressed,[3] although there is some authority to the contrary.[4] But if the instrument is not payable on demand in these cases, it is not a negotiable bill or note at all, for the reason that it is not payable at a fixed or determinable time.[5] There is no need for the court to go into the question whether it is complete and regular, and the instant case should have been decided on that ground.[6] The mere fact that the instrument is not dated does not affect its validity or negotiability,[7] and hence it would seem that in none of the "incomplete date" cases, is the objection of incompleteness or irregularity applicable. Although it is not an "incomplete" case, the question of the post-dated instrument can be conveniently noted here. Under the Act, it does not thereby become invalid,[8] and it has been held that a check of this type is complete and regular on its face.[9] Another group of cases where the

---

[1] § 52 (1).

[2] *In re Estate of Philpott* (1915) 169 Iowa 555, 151 N. W. 825.

[3] N. I. L. § 7.

[4] *Collins* v. *Trotter* (1883) 81 Mo. 275 (payable "1st day of March," without naming the year; decided before N. I. L.); *cf. M'Lean* v. *Nichlen* (1877) 3 Vict. 107, cited by Daniel, *Negotiable Instruments* (6th ed. 1913) § 88; concurring opinion of Deemer, *C. J.,* in *In re Estate of Philpott, supra,* footnote 2, p. 563. If it is payable on demand, the instrument is complete. But no such inference is possible here where the blank has been imperfectly filled. If the payee had filled in the blank with any word or date, it would seem that the plaintiff could recover under N. I. L. § 14.

[5] N. I. L. § 1 (3). In the instant case an argument might be made that it is a fixed time when coupled with the date at the top of the instrument.

[6] The court said that the instrument was non-negotiable and may have had this in mind.

[7] N. I. L. § 6 (1).

[8] N. I. L. § 12.

[9] *Hitchcock* v. *Edwards* (1889) 60 L. T. R. (N. S.) 636, decided under Eng-

courts have often said that the instrument is not complete and regular, consists of those where some party has been omitted. Where a transferee takes an instrument with the drawer's name left blank, he does not acquire a negotiable bill at all,[10] and discussion in the light of "complete and regular" seems irrelevant.[11] Likewise where there is no payee in an order instrument in the form of a note, there is no negotiable note.[12] But a bill of exchange is valid although it is unaccepted, and so has been held complete and regular upon its face.[13] Thus, as far as completeness of parties is concerned, adequate provision is made by the other sections of the Act, and no case appears where we must resort to this phrase in order to declare an otherwise negotiable instrument incomplete and therefore unenforcible by a holder in due course. Nor need we do so in the omission of the date, or of the place of drawing or payment,[14] or of sufficient words to make a promise or order.[15] And where an instrument blank as to amount is taken, it is not a note[16] until completed. If a payee, or amount, or time of payment is then inserted by the party in possession and after such completion the instrument is negotiated to a holder in due course, he may enforce it expressly under § 14 of the Act.[17]

Passing now to the question of irregularity, we first come upon the "alteration" cases, of which there are two types, the apparent and the non-apparent. Where the words "payable with interest" were written in so as to make their insertion non-apparent, the court held that the note was complete and regular on its face, and that the plaintiff was a holder in due course.[18] By negative implication, an apparent alteration would prevent its being complete and regular. The Act, § 124, in providing that a holder in due course may enforce a materially altered instrument according to its original tenor, refers to the non-apparent alterations,[19] for in the apparent alterations the transferee cannot be a holder in due course under § 52. Some courts have held that an apparent material alteration prevents the instrument from being complete and regular on its face, and then in the same breath have stated that it operates as constructive notice putting

---

lish B. E. A. § 13 (2). This result, *i. e.*, regularity, depends on how desirable and frequent it is in business to post-date checks.

[10] N. I. L. § 1 (1).

[11] *South Wales Coal Co.* v. *Underwood & Son* (1899) 15 T. L. R. 157. The case of *Davis Sewing Co.* v. *Best* (1887) 105 N. Y. 59, 11 N. E. 146, decided before the N. I. L., is really determined on this ground. There, the president failed to sign the corporation's note. The entity cannot "sign" and hence there is no note signed by a maker within § 1 (1).

[12] N. I. L., § 8, requires the payee of an order note to be named or otherwise indicated with reasonable certainty. Thus in *Tower* v. *Stanley* (1915) 220 Mass. 429, 107 N. E. 1010, the transferee acquired no note. When he wrote his own name in, it became a note in his hands, but he was filling in the blank in a manner not authorized by the maker and so could not recover.

[13] *Nat. Park Bank of N. Y.* v. *Berggren & Co.* (1914) 110 L. T. R. (N. S.) 907.

[14] N. I. L. § 6 (1), (3).

[15] N. I. L. § 1 (2).

[16] N. I. L. § 1 (2) also requires a sum certain in money. *Cf. Hunter* v. *Allen* (1908) 127 App. Div. 572, 111 N. Y. Supp. 820, *aff'd* (1911) 203 N. Y. 534, 96 N. E. 1116.

[17] § 52 (1) ("complete and regular") to some extent supports § 14 by reiterating that the filling in must be completed to enable the transferee to recover as a holder in due course, but this is unnecessary. Before completion it is not a valid bill or note. If § 52 (1) meant that the party filling in the blank cannot recover although he fills it in accordance with the authority given, it would be directly contrary to the implication from the first two sentences of § 14.

[18] *American Bank* v. *McComb* (1906) 105 Va. 473, 54 S. E. 14.

[19] The English B. E. A., § 64 (1) contains the words "but the alteration is not apparent."

the plaintiff on inquiry;[20] while other courts have regarded it as merely constituting notice.[21] The following have been held to be constructive notice from the face of the paper, no mention being made of irregularity: pencil marks by cashier showing refusal of bank to discount;[22] star mark by bank showing payment;[23] letters "N. G." written by bank;[24] notarial marks of non-acceptance;[25] erasure of name of a surety.[26] Where the payee of an order instrument transferred it without indorsement,[27] and where the instrument was marked "on contract,"[28] the court held it irregular. Indorsement of partial payments on the back would be notice, but is not held an irregularity.[29] (It is clear from the above that, paradoxically, the back of an instrument is also its face.) A restrictive indorsement or expression of fiduciary relationship with limited authority, *e. g.*, by the word "agent" or "trustee," is notice of such limitation, but, of course, there is nothing irregular about it. The apparent alteration case comes nearest to being an irregularity and it is difficult to say just where "irregular" shades off into "notice"; but at the same time it seems clearly notice of an infirmity, regardless of whether or not it is also irregular. At first blush, one might think that the "complete and regular" section intended to cover those constructive notice cases where a party carelessly failed to notice the mark or appreciate its import, because the Act in § 56 defines "notice" as the possession of actual knowledge of the infirmity or defect, or knowledge of such facts that the action of taking the instrument amounts to bad faith. But the cases show that the constructive notice doctrine has remained unimpaired under the Act, the general rule of contract law being applied that a party is conclusively presumed to have read and understood the whole of the instrument. Besides, in all these cases the instrument itself, by the better view, is not irregular, but there is rather an added something conveying a warning to the taker.

There are a few miscellaneous cases where the question of irregularity has arisen. One court passed over an excellent opportunity to discuss the doctrine of irregularity when it felt that a promissory note reading "for value received and out of love and affection" was all right.[30] And a variance between the written amount in the body of a note and the numeral amount on top might well be an irregularity or notice, but was considered neither,[31] probably under the theory that the marginal figures are a mere memorandum rather than a part of the note itself, and under the influence of the section of the Act which says that in such

---

[20] *Elias* v. *Whitney* (1906) 50 Misc. 326, 98 N. Y. Supp. 667; *Pensacola State Bank* v. *Melton* (D. C. 1913) 210 Fed. 57.

[21] *Marshall & Co.* v. *Kirschbraun & Sons* (1917) 100 Neb. 876, 161 N. W. 577; *cf. Dumbrow* v. *Gelb* (1911) 72 Misc. 400, 130 N. Y. Supp. 182; *Bloom* v. *Horowitz* (1917) 100 Misc. 687, 166 N. Y. Supp. 786.

[22] *Fowler* v. *Brantley* (U. S. 1840) 14 Pet. 318 (before N. I. L.); *Brown* v. *Taber* (N. Y. 1830) 5 Wend. 566 (before N. I. L.).

[23] See *Silverman* v. *Nat. Butchers' & Drovers' Bank* (1906) 50 Misc. 169, 171, 98 N. Y. Supp. 209.

[24] *Cf. Spero & Hirsch* v. *Holoschutz* (1901) 36 Misc. 764, 74 N. Y. Supp. 852 (notice of dishonor).

[25] *State ex rel. Hadley* v. *Greenville Bank* (Mo. App. 1916) 187 S. W. 597; *cf. Goodman* v. *Harvey* (1836) 4 A. & E. 870 (before B. E. A.). Both cases on notice of dishonor.

[26] *McCramer* v. *Thompson* (1866) 21 Iowa 244 (before N. I. L.).

[27] *Losee* v. *Bissell* (1874) 76 Pa. St. 459 (before N. I. L.).

[28] *Hughes & Co.* v. *Flint* (1911) 61 Wash. 460, 112 Pac. 633. The court stated that it was constructive notice also.

[29] *Bland* v. *Fidelity Trust Co.* (1916) 71 Fla. 499, 71 So. 630.

[30] *Cotton, Trustee,* v. *Graham* (1887) 84 Ky. 672, 2 S. W. 647.

[31] *Central Nat. Bk.* v. *Pipkin* (1896) 66 Mo. App. 592. But *cf. Lombardo* v. *Lombardini* (1910) 57 Wash. 352, 106 Pac. 907.

a conflict the sum denoted by the words is the sum payable.[32] An instrument with a printed limitation of amount but drawn for a larger sum seems irregular, but it was regarded as notice, the point of irregularity not being raised.[33] But a note which does not contain the stamp required by the federal revenue statute was held not complete and regular on its face,[34] and this seems to be the first true holding of this type.

The "complete and regular" section seems to be designed to provide for those miscellaneous cases where the instrument is different from the usual run. In connection with this, it is to be noted that the English Bills of Exchange Act uses the words as a general qualification and not as one of the several parallel conditions of being a holder in due course.[35] While it may seem unjust to criticize the tendency of the courts to make use, in many kinds of cases, of words which are present in the Act and which lend themselves so readily to such use (for it is undeniable that an instrument which lacks a complete date of payment, or a payee, or an amount, is not complete and regular on its face), it is submitted that the mere presence of words capable of a broad interpretation does not warrant their extension to cases which can be decided on more fundamental grounds under sections which specifically control such situations. The philosophy back of the sections is doubtless the feeling that a holder in due course, who is arbitrarily allowed to recover frequently at the expense of another innocent party, must be limited by strict rules and must have acted in a normal manner, above suspicion, in taking a perfectly usual type of instrument.

NON-DIRECTION BY THE TRIAL COURT AFTER REFUSAL OF REQUEST FOR ERRONEOUS INSTRUCTION.—Two recent cases illustrate the conflict of authority on the question as to whether failure to instruct on a point after a refusal by the court to give a requested erroneous instruction is reversible error on appeal. In *Louisville, etc. Ry.* v. *Craft* (Ky. 1921) 233 S. W. 741, the defendant's counsel had requested an erroneous instruction as to the measure of damages. The trial court had refused to give this instruction and had given no instruction on this point. The Kentucky Court of Appeals *held* that the failure to give a correct instruction as to the measure of damages was reversible error, on the ground that the trial court is under a duty to give a proper instruction on a point attempted to be covered by a defective request.

On the other hand, in *Parrott Tractor Co.* v. *Brownfiel* (Ark. 1921) 233 S. W. 706, the Arkansas Court, on similar facts, reached a contrary result. This court took the view that the trial court was not bound to give any instruction unless a correct one was asked, and hence the appellant could not complain of the court's failure to instruct on the measure of damages, inasmuch as it did not ask for a correct instruction on the point.

Each of these views is supported by respectable authority, though probably the majority view favors the Arkansas holding.[1] Those courts that have adopted

---

[32] N. I. L. § 17 (1). *Cf. Heeney* v. *Addy* [1910] Ir. 2 K. B. 688.
[33] *Marshall & Co.* v. *Kirschbaum & Sons, supra,* footnote 21.
[34] *Lutton* v. *Baker* (1919) 187 Iowa 753, 174 N. W. 599.
[35] § 29 (1).

[1] The following jurisdictions are in accord with the Arkansas rule: *Alexander* v. *Star-Chronicle Co.* (1917) 197 Mo. App. 601, 198 S. W. 467; *Carter & Ford* v. *Brown* (1908) 4 Ga. App. 238, 61 S. E. 142; *McWhorter* v. *Bluthenthal & Bickart* (1902) 136 Ala. 568, 33 So. 552; *Edwards* v. *Western Union, etc. Co.* (1908) 147 N. C. 126, 60 S. E. 900; *Rolfe* v. *Rich* (1893) 149 Ill. 436, 35 N. E. 352; *Williams* v. *City of Lansing* (1908) 152 Mich. 169, 115 N. W. 961; *Bagley* v. *Smith* (1853) 10 N. Y. 489; see *Anderson* v. *Northern Pacific Ry.* (1906) 34 Mont. 181, 201, 85 Pac. 884. This seems to have been the early rule in Kentucky. *Owings &*